IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 24 OF 2002.

State through Public Prosecutor
Panaji. ... Appellant.

Versus

Shri Rajendra Jadhav, Driver,
r/o Devgin, Chodan, Taluka
Tiswadi, Goa. ... Respondent.

Mr. S.N. Sardessai, Public Prosecutor for the Appellant State.

Mr. R.G. Ramani, Advocate for the Respondent.

Coram : P.V. HARDAS, J.

Date : 10th July 2003.

ORAL JUDGMENT.

The appellant/State being aggrieved by the acquittal of the respondent/accused for offences punishable under Sections 279, 337 and 338 of the Indian Penal Code, as passed by the Judicial Magistrate, First Class, Pernem, by Judgment, dated 13th March 2002, in Criminal Case No. 40/S/2001, has filed the present appeal.

2. The facts necessary for the decision of the present appeal are set out hereunder:-

According to the prosecution at about 2.45 p.m., on 5th August 2001, on the National Highway 17, near Satyem Bar, the respondent/accused drove his Esteem car, bearing registration number GA-01-S-1897, in a rash

and negligent manner and dashed against the Maruti Van, bearing registration number GA-01-R-2471, which was coming from the opposite direction. Due to the accident, the occupants of the Maruti Van and the respondent/accused sustained injuries.

3. Substance of the accusation, vide Exhibit 2, was explained to the accused. The accused pleaded not guilty and claimed to be tried.

4. Prosecution examined P.W.1 Sandhya Natekar, who was sitting in the rear seat of the Maruti Van. She has stated that the Esteem car, which was coming from the opposite direction, suddenly came towards their side of the road and dashed against the Maruti Van. She has further stated that the Esteem car was being driven at a fast speed. In the cross-examination she denied the suggestion that she had seen the Esteem car only after the accident and had not seen the accident taking place. She has also denied the suggestion that on the day of the accident it had rained and because of that the road was slippery. She denied the suggestion that because two dogs had come in front of the Esteem car and, in order to avoid hitting the dogs, the driver of the Esteem car swerved to the other side of the road and dashed against the Maruti Van. She has admitted that at a distance of 15 metres away from the place of accident,

the Esteem car was on the left hand side of the road.

5. P.W.2 Mehendra Natekar, one of the occupants of the Maruti Van has deposed in a similar manner. In the cross-examination he has admitted as true that the accident took place during the rainy season but volunteered to say that it was not raining on the relevant day. He has further stated that he did not notice whether before the accident it had rained and the water had collected in the drain which was on the side of the road. He has admitted that the police had not recorded his statement.

6. P.W.3 Prashant Parab is a panch witness to the scene of offence panchanama at Exhibit P.W.3/A. In the cross-examination he has admitted that there were brake marks on the road in the direction in which the Esteem Car was coming.

7. P.W.4 Madhura Natekar, an occupant of the Maruti Van, has stated that one Esteem car, which was coming on the opposite direction, suddenly came on their side of the road and dashed against the front portion of the Maruti Van. She further stated that the persons, who were sitting on the front seat, were injured. In the cross-examination she has stated that she saw the Esteem car when it was at a distance of 100 metres away.

8. Similar is the evidence of P.W.5 Anant Adelkar, who was driving the Maruti Van.

9. P.W.6 Shivram Naik is the Head Constable, who had conducted the investigation.

10. The learned trial Court recorded the Statement under Section 313 of the Code of Criminal Procedure of the respondent/accused, who, in his statement, stated that while he was driving his Esteem car on the left side of the road, two dogs suddenly came in front and when he applied brakes, due to the slippery road, as it had rained, the car went to the right hand side of the road and the accident took place.

11. The learned trial Court taking into consideration the evidence of the prosecution and the statement of the accused under Section 313 of the Code of Criminal Procedure recorded a finding that the respondent/accused had not driven the Esteem car in a rash and negligent manner. The learned trial Court relying on the panchanama and the sketch produced at Exhibits P.W.3/A and P.W.3/B found that there was a mention of brake marks on the road and the brake marks had started from the left hand side of the road covering a distance of about 15 metres. Thus, according to the learned trial Court, the evidence demonstrated that the

respondent/accused had applied brakes of his car when he was on the left hand side of the road. The learned trial Court has accepted the explanation of the respondent/accused that the car suddenly swerved and had gone to the right hand side of the road. The learned trial Court also found that merely because of the high speed at which the car was driven, does not prove that the respondent/accused had driven the car in a rash or negligent manner, as the accident had taken place on the Highway.

12. This is an appeal against acquittal and the view taken by the learned trial Court appears to be a possible view on the basis of the evidence. The reasoning of the learned trial Court is not perverse warranting any interference in appeal.

13. In view of this Criminal Appeal is dismissed. The bail bond stands cancelled.

(P.V. HARDAS)
JUDGE.

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